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IN THE
COURT OF APPEALS OF INDIANA

YVONNE M. BROADNAX,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0801-CR-54
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Francis C. Gull, Judge
Cause No. 02D04-0704-FD-325

May 20, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Yvonne V. Broadnax (Broadnax), appeals her sentence for possession of paraphernalia as a Class D felony, Ind. Code § 35-48-4-8.3.

We affirm.

ISSUE

Broadnax raises one issue on appeal: Whether her sentence is inappropriate in light of the nature of her offense and her character.

FACTS AND PROCEDURAL HISTORY

On April 8, 2007, police arrested Broadnax in Fort Wayne, Indiana, after she admitted to having a crack pipe in her purse. On April 11, 2007, the State filed an Information charging Broadnax with knowingly or intentionally possessing paraphernalia. This offense is generally a Class A misdemeanor, but the State charged Broadnax with a Class D felony based on a 1999 conviction for the same crime. *See* I.C. § 35-48-4-8.3. On July 24, 2007, Broadnax pled guilty as charged.

On August 20, 2007, a sentencing hearing was held. The trial court identified two aggravating circumstances: Broadnax's adult criminal history and her failed efforts at rehabilitation. Regarding the prior attempts at rehabilitation, the trial court stated:

> You have been on probation, short jail sentences, longer jail sentences, parole, Department of Correction, you've had treatment at various substance abuse providers throughout the County. You have been on the Community Transition Program, been through Re-entry Court, you've been on Drug Court, nothing has worked.

(Sentencing Tr. p. 9). The trial court also found two mitigators: Broadnax pled guilty and accepted responsibility. The trial court concluded that "the aggravating circumstance of your record and miserably failed efforts at rehabilitation outweigh the mitigating circumstances." (Sent. Tr. p. 9). As such, the trial court ordered that Broadnax be committed to the Department of Correction (DOC) for the maximum term of three years.

Broadnax now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Before we address the merits of the appeal, we note that Broadnax's attorney included a copy of the presentence investigation report on white paper in the Appellant's Appendix. In *Hamed v. State*, 852 N.E.2d 619, 621 (Ind. Ct. App. 2006), we explained:

> Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the presentence investigation report printed on white paper in his appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:
>
> > Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:
> >
> > > (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."
> > >
> > > (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" or "Confidential" and clearly designating [or

> identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

We ask that counsel follow this procedure in the future.

Turning to the merits, Broadnax argues that her maximum sentence of three years is inappropriate. Indiana Appellate Rule 7(B) permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *See* Ind. Appellate Rule 7(B); *see also Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress*, 848 N.E.2d at 1080. Broadnax has not carried this burden.

Regarding the nature of the offense, the parties agree that, as with many possession offenses, there is nothing particularly heinous about Broadnax's crime. The more hotly contested issue here is Broadnax's character. Broadnax pled guilty and accepted responsibility for her crime, which the trial court recognized as mitigating circumstances. Broadnax also focuses on her unfortunate personal history. At the age of sixteen, she was sent to the Indiana Girls School for prostitution and for being a runaway. She claims that her father was an alcoholic who verbally and sexually abused her and that she was kicked out of the house at age thirteen. She further claims that she has been diagnosed with depression, anxiety disorder, schizophrenia, borderline personality disorder, and post-traumatic stress disorder. Finally, she says she has been in and out of substance abuse treatment since age

fourteen. Despite these setbacks, Broadnax has earned her GED and taken courses at Ivy Tech, and she hopes to return to Ivy Tech.

However, even if we accept as true all of Broadnax's claims regarding her difficult past, the overriding consideration here is her significant criminal record as an adult. She has six misdemeanor convictions: three counts of prostitution, reckless possession of paraphernalia, resisting law enforcement, and false reporting. She also has two convictions for felony prostitution. Most bothersome, though, are her four previous convictions for the exact same crime with which she was charged in this case: possession of paraphernalia as a Class D felony. In addition, Broadnax has violated probation once and been declared delinquent from parole once. As the trial court emphasized, the courts have tried several different things to rehabilitate Broadnax: probation, short jail sentences, longer jail sentences, parole, substance abuse treatment, Community Transition Program, Re-entry Court, and Drug Court. Yet, "nothing has worked." (Sent. Tr. p. 9). Most pertinently, after her most recent prison stay, Broadnax was released to the Community Transition Program and then to Re-Entry Court, and she was only two weeks into the re-entry program when she committed the instant offense. Given her lengthy criminal history and the lack of success she

has had following more lenient sentences, we cannot say that the maximum sentence of three years is inappropriate.

CONCLUSION

Based on the foregoing, we conclude that Broadnax's sentence is not inappropriate.

Affirmed.

BAKER, C.J., and ROBB, J., concur.